



DEPARTMENT OF THE ARMY

ST. PAUL DISTRICT, CORPS OF ENGINEERS
ARMY CORPS OF ENGINEERS CENTRE
190 FIFTH STREET EAST
ST. PAUL, MN 55101-1638

July 18, 2001

REPLY TO
ATTENTION OF
Construction-Operations
Regulatory (01-05682-DJP)

Ms. Tina Schultheiss
Graef Anhalt Schloemer & Associates, Inc
One Honey Creek Corporate Center
125 South 84th Street, Suite 401
Milwaukee, Wisconsin 53214-1470

Dear Ms. Schultheiss:

This is in response to your transmittal form dated July 9, 2001, requesting Corps concurrence with the wetland delineation you completed at the Fries parcel. The project site is located in the SW 1/4, Sec. 5, T. 4N., R. 20E., Racine County, Wisconsin.

We have reviewed the wetland delineation report you provided and concur that the wetland boundaries at the Fries parcel have been established in accordance with the 1987 Corps of Engineers wetland delineation manual. We recommend that the delineated wetland boundaries be located by a survey and identified on a plat of survey. We recommend that the delineated wetland boundaries be identified on any development plans forwarded to our office for review. This wetland delineation shall remain valid for a period of five years from the date of this letter, unless new information warrants revision of the delineation before the expiration date.

We have also completed a jurisdictional determination regarding the delineated wetlands. This jurisdictional determination takes into consideration the U.S. Supreme Court's decision in Solid Waste Agency of Northern Cook County v. Corps of Engineers (the SWANCC decision). The area encompassed by this jurisdictional determination includes waterbodies/wetlands that are approximately 33.57 acres in size.

The subject water bodies labeled W-1, W-2A, W-2B, W-2C, W-2D, W-2E, W-3, W-4, W-5, W-5A, and W-8 in the delineation report are not "waters of the United States" because they are: (1) not navigable waters, (2) not interstate waters, (3) not part of a tributary system to 1 or 2, (4) not wetlands adjacent to any of the foregoing, and not an impoundment of any of the above. In addition, the interstate commerce nexus to these particular waterbodies is insufficient to establish Clean Water Act jurisdiction. These waterbodies are therefore not subject to regulation by the Corps of Engineers under Section 404 of the Clean Water Act.

We have also determined that the subject waterbodies labeled W-6, W-7A, W-7B, W-7C, W-7D, and W-7E are subject to regulation



by the Corps under §404 of the Clean Water Act because they are contiguous and adjacent to Long Lake, a tributary to the Fox River, an interstate, navigable water of the United States. Therefore, a Department of the Army permit would be required to discharge dredged and/or fill materials into these waterbodies.

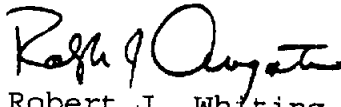
Should the development of this property require a discharge of dredged and/or fill materials within the jurisdictional wetlands identified above, our public interest review would include an assessment of ALL wetland impacts associated with the project. This could result in a requirement to provide compensatory mitigation for impacts to non-jurisdictional wetlands as well as jurisdictional wetlands.

This jurisdictional determination is valid only for the project and waterbody referenced above. It is based on the Headquarters guidance available to us at this time. PLEASE NOTE THAT THIS LETTER DOES NOT ELIMINATE THE NEED FOR OTHER FEDERAL, STATE, LOCAL, OR OTHER AUTHORIZATIONS (SUCH AS THOSE OF THE DEPARTMENT OF NATURAL RESOURCES OR COUNTY).

If you disagree with the enclosed jurisdictional determination, you may provide new information or appeal the jurisdictional determination. Please follow the directions in Section D of the enclosed Notification of Administrative Appeals Options and Process and Request for Appeal.

The decision regarding this action is based on information found in the administrative record, which documents the District's decision-making process, the basis for decision, and the final decision. If you have any questions, contact Dale Pfeiffle in our Waukesha office at (262) 547-0868. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,


for Robert J. Whiting

Chief, Regulatory Branch

Enclosure

Copy furnished to:

Shane Heyel, WDNR, Sturtevant, WI
Lois Simon, WDNR, Madison, WI
Frank Risler, Racine County, Sturtevant, WI